



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 23, 1995

Mr. Larry Persky  
Staff Attorney  
Legal Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR95-1122

Dear Mr. Persky:

You ask for reconsideration of Open Records Letter No. 95-948 (1995) which concerned a request for copies of complaints against a particular individual allegedly engaged in the unauthorized dumping of solid waste in a stock tank which was being used as a landfill. Specifically you request that we reconsider our determination under the informer's privilege as it applies to two documents submitted as exhibits A-4 and A-5. Your request for reconsideration was assigned ID# 36149.

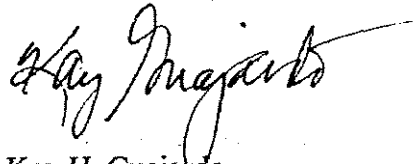
We have reviewed the documents submitted for our reconsideration. We note that it appears that the informant is a public employee. You do not address whether this individual reported an allegation of criminal wrongdoing in his official capacity as a public employee. *See generally* Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 285 (1981) at 1, 279 (1981) at 1-2. The informer's privilege is designed to protect an ordinary citizen communicating his knowledge of the commission of a crime to law enforcement officials. *See Roviario v. United States*, 353 U.S. 53, 59 (1957). We do not believe the informer's privilege protects the identities of public employees who are acting within the scope of their employment when they report complaints. *Cf. United States v. St. Regis Paper Co.* 328 F. Supp. 660, 665 (W.D. Wis. 1971) (concluding that public officer may not claim an informer's reward for service it is his or her official duty to perform).

Accordingly, if the individual reported the alleged unauthorized dumping in the scope of his official duties as a public employee, you may not withhold the requested information under the informer's privilege. However, if the individual was acting in a

purely private capacity as a concerned citizen, then you may withhold the following information: 1) the inside address and the information circled in the salutation on exhibit A-4, and 2) the information marked with brackets on exhibit A-5. You may not withhold the information you have circled in red on exhibit A-5, as it does not reveal the complainant's identity.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Open Records Division

KHG/LBC/rho

Ref: ID# 36149

Enclosures: Marked documents

cc: Mr. William G. Herrmann  
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(w/o enclosures)